

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

11 NANCY SIQUEIROS, AN) Case No. EDCV 13-01789-VAP
12 INDIVIDUAL,) (DTBx)
13 Plaintiff,)
14 v.)
15 FEDERAL NATIONAL)
16 MORTGAGE ASSOCIATION AS)
17 SUCCESSOR-IN-INTEREST TO)
18 BANK OF AMERICA)
CORPORATION, etc., et)
al.)
Defendants.)

ORDER GRANTING MOTION FOR
SUMMARY JUDGMENT
[Motion filed on April 17,
2015 (Doc. No. 44)]

This case addresses the limited question of whether Defendants Federal National Mortgage Association and Bank of America, N.A. (collectively, "BANA"), breached a contractual duty owed to Plaintiff Nancy Siqueiros ("Siqueiros") to: (1) give her notice that her loan was in arrears and her property subject to sale or (2) provide her with notice of the precise amount required to cure the default prior to sale. On April 17, 2015, BANA filed a Motion for Summary Judgment ("MSJ"). (Doc. No.

1 44.) The matter came before the Court for a hearing on
2 May 18, 2015. After consideration of the papers filed in
3 support of, and in opposition to, the MSJ, the Court
4 GRANTS the MSJ, and enters judgment in favor of BANA as
5 to all of Siqueiros's claims.

6

7 **I. UNDISPUTED FACTS**

8 To the extent certain facts, or conclusions, are not
9 mentioned in this Order, the Court has not relied on them
10 in reaching its decision. In addition to considering the
11 evidentiary objections raised by the parties, the Court
12 has independently considered the admissibility of the
13 evidence underlying BANA's Statement of Undisputed Facts
14 and Siqueiros's Statement of Genuine Issues, and has not
15 considered facts that are irrelevant or based upon
16 inadmissible evidence. The material facts described in
17 I.B. below are supported adequately by admissible
18 evidence and are uncontested. They are "admitted to
19 exist without controversy" for the purposes of this
20 Motion. See L.R. 56-3.

21

22 **A. Evidentiary Objections**

23 Before setting forth the uncontested facts in this
24 action, the Court examines the admissibility of the
25 evidence offered by both sides in support of, and
26 opposition to, the MSJ. "A trial court can only consider
27 admissible evidence in ruling on a motion for summary
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1 judgment." Orr v. Bank of America, 285 F.3d 764, 773
2 (9th Cir. 2002). At the summary judgment stage, district
3 courts consider evidence with content that would be
4 admissible at trial, even if the form of the evidence
5 would not be admissible at trial. See Fraser v. Goodale,
6 342 F.3d 1032, 1036 (9th Cir. 2003); Block v. City of Los
7 Angeles, 253 F.3d 410, 418-19 (9th Cir. 2001). Moreover,
8 "objections to evidence on the ground that it is
9 irrelevant, speculative, and/or argumentative, or that it
10 constitutes an improper legal conclusion are all
11 duplicative of the summary judgment standard itself" and
12 thus need not be considered on a motion for summary
13 judgment. Burch v. Regents of Univ. of California, 433
14 F. Supp. 2d 1110, 1120 (E.D. Cal. 2006).

15

16 Siqueiros does not dispute any of the facts in BANA's
17 Statement of Undisputed Facts. (See Siqueiros's
18 Statement of Genuine Issues ("SGI") (Doc. No. 54).) As
19 to Siqueiros's Statement of Genuine Disputes, BANA
20 objects to all of those facts on hearsay, foundational,
21 and relevance grounds. (See BANA's Response to
22 Siqueiros's SGI (Doc. No. 56); BANA's Objections to
23 Siqueiros's SGI (Doc. No. 57).)

24

25 BANA's primary objection is that the statements in
26 the SGI (and its single piece of accompanying evidence,
27 Siqueiros's declaration) are not relevant to Siqueiros's
28

1 remaining claims. In a previous Order, the Court
2 dismissed many of the claims in Siqueiros's Seconded
3 Amended Complaint ("SAC"). The only remaining claims are
4 for breach of contract and breach of the covenant of good
5 faith and fair dealing related to BANA's alleged failure
6 to provide Siqueiros with certain required notices and
7 its alleged refusal to provide her with a reinstatement
8 calculation. (See Order Granting in Part and Denying in
9 Part Defendants' Motion to Dismiss ("Dismissal Order")
10 (Doc. No. 32) at 13-16.)

11

12 The Court SUSTAINS the objections to ¶¶ 2-10 of the
13 SGI. Those statements relate to claims the Court has
14 already dismissed, and thus are not relevant to the
15 remaining claims in the case. The Court OVERRULES the
16 objections to ¶¶ 1, 11-32 of the SGI. Those statements
17 could be relevant to the remaining claims in this case,
18 as they deal with her request for, and non-receipt of,
19 the reinstatement calculation.

20

21 **B. Facts**

22 **1. Siqueiros's Purchase of the Property**

23 Siqueiros obtained a loan in the amount of \$108,500
24 to finance property in Cathedral City, California on May
25 18, 2004. (SUF ¶ 1.) This was a rental property and was
26 not Siqueiros's primary residence; her mailing address,

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28

1 *i.e.*, the correct address where all notices should be
2 sent, was in Torrance, California. (SUF ¶¶ 9-10.)
3

4 **2. The Deed of Trust**

5 The Deed of Trust ("DOT") that secured the Note
6 identifies Siqueiros as the borrower, Bank of America,
7 N.A. as the lender and beneficiary, and PRLAP, Inc., as
8 trustee. (SUF ¶ 2.) Siqueiros signed the Note and the
9 DOT. (SUF ¶ 3.) The DOT states that if Siqueiros
10 defaults on her mortgage payments, the lender, and its
11 successors and assigns, has the right to accelerate the
12 loan and invoke the power of sale. (SUF ¶ 4.)
13

14 Specifically, Section 22 of the DOT states:
15

16 Lender shall give notice to Borrower prior to
17 acceleration following Borrower's breach of any
18 covenant or agreement in this Security
19 Instrument The notice shall specify: (a)
20 the default; (b) the action required to cure the
21 default; (c) a date, not less than 30 days from
22 the date the notice is given to Borrower, by
23 which the default must be cured; and (d) that
24 failure to cure the default on or before the
25 date specified in the notice may result in
26 acceleration of the sums secured by this
27 Security Instrument and sale of the Property.
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1 (SUF ¶ 5.) Section 22 further states:

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3 If the lender invokes the power of sale, Lender
4 shall execute or cause Trustee to execute a
5 written notice of the occurrence of an event of
6 default and the Lender's election to cause the
7 Property to be sold. Trustee shall cause this
8 notice to be recorded in each county in which
9 any part of the Property is located. Lender or
10 Trustee shall mail copies of the notice by
11 Applicable law.

12

13 (SUF ¶ 6.) Section 15 of the DOT also requires that

14

15 [a]ny notice to Borrower in connection with this
16 Security Instrument shall be deemed to have been
17 given to Borrower when mailed by first class
18 mail or when actually delivered to Borrower's
19 notice address if sent by other means.

20

21 (SUF ¶ 7.) Section 19 provides that:

22

23 If Borrower meets certain conditions, Borrower
24 shall have the right to have enforcement of this
25 Security Instrument discontinued at any time
26 prior to the earliest of: (a) five days before
27 sale of the Property pursuant to any power of
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1 sale contained in this Security Instrument; (b)
2 such other period as Applicable Law might
3 specify for the termination of Borrower's right
4 to reinstate; or (c) entry of a judgment
5 enforcing this Security Instrument.

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7 (SUF ¶ 8.)

8

9 **3. Siqueiros's Default and Foreclosure**

10 Due to financial difficulties, Siqueiros sought to
11 modify the terms of the loan securing the Torrance
12 property; in order to do this, she intentionally
13 defaulted on the loan securing the Cathedral City
14 property in 2008. (SUF ¶ 12.) She stopped making
15 payments altogether in 2010. (SUF ¶¶ 13-14.)

16

17 On or about December 20, 2010, BANA mailed a Notice
18 of Intent to Accelerate, advising Siqueiros that the loan
19 on the Cathedral City property was in default and that
20 she had until January 19, 2011 to cure the default or
21 foreclosure proceedings would be initiated. (SUF ¶ 15.)
22 This Notice was mailed to the Torrance address. (SUF
23 ¶ 16.) A further notice was mailed on February 28, 2011,
24 advising Siqueiros that no payment had been received and
25 the loan had been referred to the Foreclosure Review
26 Committee. (SUF ¶ 18.) Siqueiros received this letter

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1 and understood that BANA had not received any payments on
2 the loan. (SUF ¶ 19.)

3

4 On March 2, 2011, ReconTrust Company, N.A., which had
5 been duly substituted as trustee under the DOT, recorded
6 a Notice of Default due to the arrears owed on the loan
7 in the amount of \$3,415.49. (SUF ¶¶ 25-26.) On March 9,
8 2011, the Notice of Default was mailed by registered or
9 certified mail and first class mail, with postage fully
10 prepaid to Siqueiros at the Torrance address. (SUF
11 ¶ 28.)

12

13 A Notice of Trustee's Sale was recorded on June 13,
14 2011, noticing a sale for July 7, 2011. (SUF ¶ 30.) On
15 June 16, 2011, the Notice of Trustee's Sale was mailed by
16 registered or certified mail and first class mail, with
17 postage fully prepaid to Siqueiros at the Torrance
18 address.¹ (SUF ¶ 31.)

19

In June 2011, Siqueiros requested a "reinstatement calculation," in order to cure the default. (SUF ¶ 32.) Specifically, on June 28, 2011, Siqueiros called BANA and told BANA's agent to fax the reinstatement calculation to a telephone number ending in 1251. (SUF ¶¶ 33, 35.)

25

26 ¹ BANA's SUF states that it mailed a Notice of
27 Default on that date, but the relevant exhibit shows that
the Notice of Trustee's Sale was the actual document
28 mailed.

1 BANA faxed the reinstatement calculation to that number
2 on June 28, 2011. (SUF ¶ 34.) Siqueiros did not remit
3 payment to make current her payments on the loan. (SUF
4 ¶ 36.) As a consequence, the Cathedral City property was
5 sold at a public auction on July 7, 2011. (SUF ¶ 37.)
6

7 **C. Procedural History**

8 Siqueiros initially filed this action on October 2,
9 2013. The Court granted two motions brought by BANA to
10 dismiss the Complaint with leave to amend. (Doc. Nos.
11 18, 25.) BANA also moved to have the SAC dismissed; the
12 Court granted that motion in part and denied it in part.
13 (Doc. No. 32.) The Court held that, to the extent
14 Siqueiros alleged that BANA breached the terms of the DOT
15 when it failed to provide her with notice of the default
16 or of the foreclosure, or that it failed to provide her
17 with a reinstatement figure timely in breach of the DOT
18 and the covenant of good faith and fair dealing, the SAC
19 could not be dismissed for failure to state a claim. As
20 it related to any of her other claims, including her
21 claims for fraud or negligence alleging that BANA induced
22 her to default on her loan, the Court dismissed those
23 claims without leave to amend.

24
25 BANA filed the MSJ on April 17, 2015. (Doc. No. 44.)
26 Along with the MSJ, BANA filed:
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- 1 • A Statement of Undisputed Facts (Doc. No. 49);
- 2 • the Declaration of Shama Ali (Doc. No. 45);
- 3 • the Declaration of Michael Gerst (Doc. No. 46);
- 4 • the Declaration of Tabi Habib (Doc. No. 47);
- 5 • the Declaration of Jamie Wells (Doc. No. 48);
- 6 • Exhibits 1-18 (Doc. No. 50-51).

7
8 On April 24, 2015, Siqueiros filed her Opposition to
9 the MSJ.² (Doc. No. 52). Along with her Opposition,
10 Siqueiros filed:

- 11
- 12 • A Statement of Genuine Issues ("SGI") (Doc. No.
 - 13 52);
 - 14 • the Declaration of Nancy Siqueiros (Doc. No.
 - 15 53).

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17 On May 4, 2015, BANA filed its Reply. (Doc. No. 55.)
18 Along with the Reply, BANA filed:

- 19
- 20 • BANA's Response to Siqueiros's Statement of
 - 21 Genuine Issues (Doc. No. 56);

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25 ² The Opposition is three and a half pages long
26 and contains virtually no legal substance or argument.
27 Instead, it claims, without any analysis, that "[t]hese
28 issues are in dispute and are sufficient to prove breach
of contract and breach of the covenant of good faith and
fair dealing, and support denying this Motion for Summary
Judgment." (Opp'n at 3.)

- BANA's Objections to Evidence Submitted in Support of Siqueiros's Statement of Genuine Issues (Doc. No. 57).

II. LEGAL STANDARD

6 A motion for summary judgment or summary adjudication
7 shall be granted when there is no genuine issue as to any
8 material fact and the moving party is entitled to
9 judgment as a matter of law. Fed. R. Civ. P. 56(c);
10 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48
11 (1986). The moving party must show that "under the
12 governing law, there can be but one reasonable conclusion
13 as to the verdict." Anderson, 477 U.S. at 250.

Generally, the burden is on the moving party to demonstrate that it is entitled to summary judgment. Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998); Retail Clerks Union Local 648 v. Hub Pharmacy, Inc., 707 F.2d 1030, 1033 (9th Cir. 1983). The moving party bears the initial burden of identifying the elements of the claim or defense and evidence that it believes demonstrates the absence of an issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

25 Where the non-moving party has the burden at trial,
26 however, the moving party need not produce evidence
27 negating or disproving every essential element of the

1 non-moving party's case. Celotex, 477 U.S. at 325.
2 Instead, the moving party's burden is met by pointing out
3 that there is an absence of evidence supporting the non-
4 moving party's case. Id.

5

6 The burden then shifts to the non-moving party to
7 show that there is a genuine issue of material fact that
8 must be resolved at trial. Fed. R. Civ. P. 56(e);
9 Celotex, 477 U.S. at 324; Anderson, 477 U.S. at 256. The
10 non-moving party must make an affirmative showing on all
11 matters placed in issue by the motion as to which it has
12 the burden of proof at trial. Celotex, 477 U.S. at 322;
13 Anderson, 477 U.S. at 252. See also William W.
14 Schwarzer, A. Wallace Tashima & James M. Wagstaffe,
15 Federal Civil Procedure Before Trial § 14:144. "This
16 burden is not a light one. The non-moving party must
17 show more than the mere existence of a scintilla of
18 evidence." In re Oracle Corp. Securities Litigation, 627
19 F.3d 376, 387 (9th Cir. 2010) (citing Anderson, 477 U.S.
20 at 252).

21

22 A genuine issue of material fact will exist "if the
23 evidence is such that a reasonable jury could return a
24 verdict for the non-moving party." Anderson, 477 U.S. at
25 248. In ruling on a motion for summary judgment, a court
26 construes the evidence in the light most favorable to the
27 non-moving party. Barlow v. Ground, 943 F.2d 1132, 1135
28

¹ (9th Cir. 1991); T.W. Elec. Serv. Inc. v. Pac. Elec. Contractors Ass'n, 809 F.2d 626, 630-31 (9th Cir. 1987).

III. DISCUSSION

As explained above, only two claims remain in this action: (1) breach of contract based on BANA's alleged failure to provide Siqueiros with notice of the default or notice of the trustee's and failure to provide her with the reinstatement amount in accordance with the terms of the DOT, and (2) breach of the covenant of good faith and fair dealing based on BANA's alleged failure to provide her with the reinstatement amount. (Dismissal Order at 13-16.) For the reasons explained below, Siqueiros has pointed to no genuine dispute of material fact to preclude a grant of summary judgment as to any of those claims. Accordingly, the Court finds that the undisputed facts show that none of Siqueiros's claims have merit.

A. Siqueiros's Breach of Contract Claims Fail

21 "A cause of action for damages for breach of contract
22 is comprised of the following elements: (1) the contract,
23 (2) plaintiff's performance or excuse for nonperformance,
24 (3) defendant's breach, and (4) the resulting damages to
25 plaintiff." Careau & Co. v. Sec. Pac. Bus. Credit, Inc.,
26 222 Cal. App. 3d 1371, 1388 (1990) (citing Reichert v.
27 General Ins. Co., 68 Cal. 2d 822, 830 (1968)).

1 **1. BANA Did Not Breach the DOT by Failing to Mail**
2 **the Notice of Default**

3 With respect to Siqueiros's claim that BANA breached
4 the terms of the DOT by failing to mail her the Notice of
5 the Default, the undisputed evidence shows that she was,
6 in fact, mailed that notice. As noted above, Section 22
7 of the DOT, which details the notice required to
8 accelerate the loan in case of default, states that

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10 notice to Borrower in connection with this
11 Security Instrument shall be deemed to have been
12 given to Borrower when mailed by first class
13 mail or when actually delivered to Borrower's
14 notice address if sent by other means.

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16 (SUF ¶ 7.) It is undisputed that the Notice of Default
17 was mailed to Siqueiros's Torrance address, in accordance
18 with the DOT. (SUF ¶ 28.) Thus, as it is undisputed
19 that BANA mailed Siqueiros the Notice of Default in
20 accordance with the terms of the DOT, Siqueiros cannot
21 prevail on her claim that BANA breached the DOT, and
22 Siqueiros fails to raise a triable issue of fact as to
23 this claim. Accordingly, the Court enters judgment
24 against Siqueiros on this claim.

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1 **2. BANA Did Not Breach the DOT by Failing to Mail**
2 **the Notice of Trustee's Sale**

3 After the Notice of Default was mailed to Siqueiros,
4 she did not cure the default. (SUF ¶ 17, 27.) Thus,
5 BANA was justified in exercising its power to sell the
6 property, pursuant to the DOT. It is also undisputed
7 that BANA mailed a copy of the Notice of Trustee's Sale
8 to Siqueiros's Torrance address, in accordance with the
9 DOT. (SUF ¶ 31.) Thus, as it is undisputed that BANA
10 mailed Siqueiros the Notice of Trustee's Sale in
11 accordance with the terms of the DOT, Siqueiros cannot
12 prevail on her claim that BANA breached the DOT, and
13 Siqueiros fails to raise a triable issue of fact as to
14 this claim. Accordingly, the Court enters judgment
15 against Siqueiros on this claim.

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17 **3. BANA Did Not Breach the DOT by Failing to**
18 **Provide Siqueiros with a Reinstatement**
19 **Calculation**

20 Finally, it is undisputed that Siqueiros attempted to
21 contact BANA in June 2011 in order to reinstate her loan.
22 (SUF ¶ 32.) As noted above, Section 15 of the DOT
23 provides the borrower with the right to bring the loan
24 current, after paying a reinstatement amount, so long as
25 the borrower does so "at any time prior to the earliest
26 of: (a) five days before sale of the Property pursuant to
27 any power of sale contained in this Security Instrument;

1 (b) such other period as Applicable Law might specify for
2 the termination of Borrower's right to reinstate" (SUF ¶ 8.)

4

5 BANA's business records indicate that on June 28,
6 2011, Siqueiros called and requested a reinstatement
7 calculation. (SUF ¶ 33.) Siqueiros requested that BANA
8 fax the reinstatement calculation to her telephone number
9 ending in 1215. (SUF ¶¶ 32-33.) Siqueiros later
10 confirmed that the telephone number ending in 1215 was
11 indeed hers. (SUF ¶ 35.) BANA transmitted the
12 reinstatement calculation to Siqueiros via facsimile to
13 the telephone number ending in 1215 on June 28, 2011, at
14 10:35 a.m. (SUF ¶ 34.) Thus, it is undisputed that BANA
15 sent Siqueiros a reinstatement calculation on June 28,
16 2011. Though Siqueiros claims that her efax was broken
17 at the time BANA faxed her the reinstatement calculation
18 (see SGI ¶ 13), this does not change the undisputed fact
19 that the reinstatement calculation was indeed sent.

20

21 According to Siqueiros, however, she contacted BANA
22 on June 30, 2011, to request again that BANA provide her
23 with a reinstatement figure faxed to a different
24 telephone number; BANA apparently never sent this fax.
25 (SGI ¶¶ 14-17.) Even assuming this is true, however,
26 BANA had no obligation to provide her a reinstatement
27 calculation on that date.

28

1 First, as explained above, BANA already had sent
2 Siqueiros a reinstatement calculation on June 28, 2011.
3 More critically, under the DOT, BANA had no obligation to
4 send her a reinstatement calculation on June 30, 2011
5 because she could no longer redeem the property by paying
6 the arrears as of that date.

7

8 As explained by BANA in its Reply, the Trustee's Sale
9 had been noticed for July 7, 2011. (Reply at 5-8; SUF
10 ¶ 30.) The DOT allows a borrower to submit a payment to
11 bring a loan current at the earliest of five days before
12 the trustee's sale or any other such period as provided
13 by law. Here, California law does so provide.
14 California Civil Code § 2924c(e) states that the right to
15 reinstate exists "until five business days prior to the
16 date of sale set forth in the initial recorded notice of
17 sale." Section 2924c(e) further reiterates that "[a]ny
18 right of reinstatement created by this section is
19 terminated five business days prior to the date of sale"
20 and that "[n]othing contained herein shall give rise to a
21 right of reinstatement during the period of five business
22 days prior to the date of sale." *Id.*; *Gonzalez v. Wells*
23 *Fargo Bank, FSB*, 2011 WL 1877219, at *2 (N.D. Cal. May
24 17, 2011) ("the statute clearly states that Gonzalez's
25 right to reinstatement terminates five business days
26 before the date of sale.").

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1 As used in Section 2924c(e), the term "business day"
2 has the same meaning as specified in California Civil
3 Code § 9. Section 9, in turn, states that business days
4 are every day other than Sundays and holidays as provided
5 by the California Government Code. The California
6 Government Code states that July 4th is a holiday. Cal.
7 Gov't Code § 6700(a)(8).

June 30, 2011 was a Thursday, less than five business days before the Trustee's Sale on July 7, 2011.³ Even if she wanted to, Siqueiros could not have exercised her statutory right of reinstatement on that date; thus, BANA could not have breached the terms of DOT by failing to provide her with a reinstatement calculation that would have been of no use to her. To the extent Siqueiros claims that BANA breached the terms of the DOT by failing to provide her with reinstatement calculations on dates after June 30, 2011, those claims similarly fail because Siqueiros could not have exercised the option to pay the reinstatement calculation at any point after June 30, 2011.

23 As BANA points out, to hold otherwise would lead to
24 absurd results, namely that Siqueiros "could wait until a
25 few days before the properly noticed foreclosure sale to

3 There were four: Friday July 1, 2010, Saturday
28 July 2, 2010, Tuesday July 5, and Wednesday July 6, 2010.

1 request a reinstatement figure and then bring a claim for
2 breach of contract years later because BANA allegedly
3 failed to get the reinstatement figure to her quick
4 enough." (Reply at 8.) Such a result would be contrary
5 to statute and the terms of the DOT.

6

7 Accordingly, the Court finds that the undisputed
8 evidence shows that Siqueiros cannot prevail on her claim
9 that BANA breached the DOT by failing to provide her with
10 a reinstatement calculation and Siqueiros fails to raise
11 a triable issue of fact as to this claim. Accordingly,
12 the Court enters judgment against Siqueiros on this
13 claim.

14

15 **B. Siqueiros's Claim for Breach of the Covenant of Good
16 Faith and Fair Dealing Also Fails**

17 The Court also allowed Siqueiros to proceed on her
18 theory that BANA breached the covenant of good faith and
19 fair dealing by refusing to provide her with a
20 reinstatement figure. (Dismissal Order at 12-13.)

21

22 "There is an implied covenant of good faith and fair
23 dealing in every contract that neither party will do
24 anything which will injure the right of the other to
25 receive the benefits of the agreement." Kransco v.
26 American Empire Surplus Lines Ins. Co., 23 Cal. 4th 390
27 (2000) (quoting Comunale v. Traders & General Ins. Co.,
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1 50 Cal. 2d 654, 658 (1958)). "In essence, the covenant
2 is implied as a *supplement* to the express contractual
3 covenants, to prevent a contracting party from engaging
4 in conduct which (while not technically transgressing
5 the express covenants) frustrates the other party's
6 rights to the benefits of the contract." Racine &
7 Laramie, Ltd. v. Dep't of Parks & Recreation, 11 Cal.
8 App. 4th 1026, 1031-32 (1992) (quoting Love v. Fire Ins.
9 Exchange, 221 Cal. App. 3d 1136, 1153 (1990)).

10
11 To state a claim for a breach of the covenant of good
12 faith and fair dealing, the plaintiff must allege: "(1)
13 the parties entered into a contract; (2) the plaintiff
14 fulfilled [her] obligations under the contract; (3) any
15 conditions precedent to the defendant's performance
16 occurred; (4) the defendant unfairly interfered with the
17 plaintiff's rights to receive the benefits of the
18 contract; and (5) the plaintiff was harmed by the
19 defendant's conduct." Rosenfeld v. JPMorgan Chase Bank,
20 N.A., 732 F. Supp. 2d 952, 968 (N.D. Cal. 2010) (citing
21 Judicial Council Of California Civil Jury Instruction
22 325).

23
24 In order for a breach of contract to be a breach of
25 the covenant of good faith and fair dealing, there also
26 must be "'something beyond breach of the contractual duty
27 itself,' [such as] 'unfair dealing rather than mistaken
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1 judgment'" Congleton v. Nat'l Union Fire Ins.
 2 Co., 189 Cal. App. 3d 51, 59 (1987).

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4 Here, as discussed above, there is no evidence that
 5 BANA interfered in any way with Siqueiros's rights to
 6 receive the benefits of the DOT. The undisputed evidence
 7 instead shows that BANA mailed Siqueiros the Notice of
 8 Default, the Notice of Trustee's Sale, and faxed her a
 9 reinstatement calculation on June 28, 2011, at her
 10 request. By the time Siqueiros made any subsequent
 11 attempts to obtain a reinstatement calculation, her
 12 contractual and statutory right to redeem had passed.⁴

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14 Accordingly, the Court finds that the undisputed
 15 evidence shows that Siqueiros cannot prevail on her claim
 16 that BANA breached the implied covenant of good faith and
 17 fair dealing by failing to provide her with a

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20 ⁴ As pointed out by BANA in its Reply, many of the
 21 assertions Siqueiros made in her declaration in
 22 opposition to summary judgment contradict the allegations
 23 in the SAC or are entirely new. (Reply at 9-10.) The
 24 Court has not considered allegations that contradict the
 25 SAC (see Cline v. Indus. Maint. Eng'g & Contracting Co.,
 200 F.3d 1223, 1232 (9th Cir. 2000) (holding that a party
 could not contradict allegations in an earlier pleading
 in an effort to survive summary judgment), or allegations
 that were not part of the SAC (see Wasco Products, Inc.
v. Southwall Technologies, Inc., 435 F.3d 989, 992 (9th
 Cir. 2006) ("[T]he necessary factual averments are
 required with respect to each material element of the
 underlying legal theory Simply put, summary
 judgment is not a procedural second chance to flesh out
 inadequate pleadings." (citation omitted))).

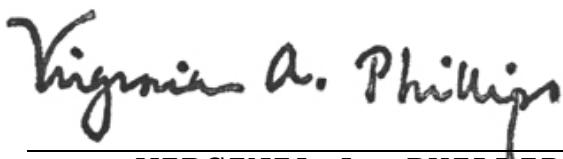
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1 reinstatement calculation. Thus, the Court enters
2 judgment against Siqueiros on this claim.
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4 **IV. CONCLUSION**

5 For the reasons stated above, the Court GRANTS the
6 MSJ in its entirety and enters judgment in favor of BANA
7 as to all claims.

8 Dated: June 1, 2015

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10 VIRGINIA A. PHILLIPS
11 United States District Judge

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